

Brickman - Direct / Recess / Brickman - Direct 25

1 COURT OFFICER: All rise.

2 (Recess)

3 THE COURT: Be seated everybody. Be seated .  
4 Continue.

5 MR. HICKERSON: Yes, Your Honor. In light of your  
6 comments we've pared down the rest of the direct. I expect to  
7 have about ten or 15 more minutes.

8 Q Professor, can you tell me about any state legislative  
9 reforms that impact on asbestos litigation?

10 A Yes. There have been some very significant legislative  
11 reforms at the state level, in Texas, in Mississippi. In  
12 addition to what I've already indicated, Texas has included a  
13 successor liability section which limits the liability of  
14 parent companies which have acquired smaller companies which  
15 came equipped with asbestos liability, to the gross asset value  
16 of the acquired company. This is a very significant  
17 legislative event in addition to the legislation with regard to  
18 venue.

19 In Mississippi there's been extensive legislative reform,  
20 including a limitation on punitive damages going forward, which  
21 of course is very relevant to the -- especially in light of the  
22 testimony earlier about the Cosie case, which was a Mississippi  
23 case in which the settlement was driven by punitive damage  
24 considerations.

25 In Ohio there has been essentially a legislative enactment

Brickman - Direct

26

1 that carries forward Judge Wiener's order in the MDL,  
2 eliminating all of claims generated by screenings. In the Ohio  
3 legislation all of the screening claims, the non-malignant  
4 claim, in any event, are precluded from being brought forward.  
5 That's a shorthand way of putting that. Ohio also included a  
6 successor liability section similar to that in Texas. There  
7 was an Ohio case just a few days ago involving a lung cancer  
8 which involved the interpretation of the new Ohio statute, and  
9 it was an interpretation that limited the ultimate effect of  
10 the statute. Whether that applies to the non-malignants  
11 remains to be seen. I would expect that the -- before -- that  
12 the ultimate decision will be made by the Ohio Supreme Court.

13 Q So, the recent decision was a Trial Court decision?

14 A It was a Trial Court decision.

15 Q Professor, I'd like to ask you just a couple of questions  
16 on the Manville trust. I know the Court has heard a lot on  
17 that already, so I just want to focus on some things which have  
18 not been discussed. Can you tell me whether, in the 1995 time  
19 period, there were any significant events with respect to the  
20 Manville trust?

21 A Yes, there were. When the Manville trust was  
22 reconstituted by Judges Weinstein and Lifland and opened its  
23 doors again, it was inundated with non-malignant claims. That  
24 is to say it received far more such claims than it had  
25 anticipated, and in response the Manville trust undertook an

Brickman - Direct

27

1 audit of these claims and created an audit process that was  
2 designed to confirm the readings of the asbestos lawyer B  
3 Readers. They found, however, a very high error rate on the  
4 part of the B Readers by bringing in outside readers. They  
5 also found high accumulations or concentrations of B readings  
6 by certain B Readers and they acted on the basis of that by  
7 requiring x-rays in some cases, and subjecting those x-rays to  
8 audits.

9 Q And what happened next?

10 A Well, the asbestos lawyers objected to that, and they sued  
11 the Manville trust, and so there was a judicial proceeding that  
12 ensued on the legitimacy, if you will, of adopting these  
13 procedural devices and the Manville trust essentially conceded,  
14 and discontinued use of this audit process.

15 THE COURT: Was this all done in secret? Or is it  
16 part of an official Court record somewhere? And if it's a  
17 Court record why are we hearing testimony about it? For  
18 heaven's sake, will you please stop wasting time?

19 MR. HICKERSON: Very well, Your Honor.

20 Q We've heard testimony about the changes in the TDP in  
21 2002. Can you tel me what effect on the filing rates those  
22 changes had?

23 A Well, after the audit process did not prevail, there was a  
24 huge spike up in claims in 2000, 2001, from 1999. And Judge  
25 Weinstein reconsidered the proceeding that he had presided

Brickman - Direct

28

1 over, and sua sponte decided to hold another proceeding on the  
2 question of amending the TDP. And this resulted in a  
3 negotiated settlement, and in 2002 he ratified that negotiated  
4 settlement, which is now called the 2002 TDP, though noting in  
5 his decision that it would not eliminate the opportunity for  
6 fraudulent claiming, but that it would decrease the likelihood  
7 of the success of such claiming. So, in 2002, effective in  
8 mid-2003, a new TDP came into existence.

9 Q And since the new TDP, what is the claiming rate against  
10 Manville? How has that reacted?

11 A The purpose of the new TDP was to decrease the number of  
12 non-malignancy claims and to direct more of the money that was  
13 being paid out by the trust to the malignancies. And this, in  
14 fact, was accomplished in 2003. The number of claimants  
15 submitting new claims to Manville was 101,400. In 2004, the  
16 number had declined to 14,752, which was an over 85 percent  
17 decrease. In 2003, the ratio of non-malignants to malignants  
18 was nine to one. In 2004, the ratio had declined to three to  
19 one, so that the new TDP achieved a significant amount of  
20 success.

21 THE COURT: They're still only getting five cents on  
22 the dollar, as I understand it.

23 THE WITNESS: Yes, but they are considering  
24 increasing that right now because of the decline. So, they've  
25 already instituted the steps necessary to begin -- they've

Brickman - Direct

29

1 already begun the process that could lead to a raise in the  
2 percentage because of the decline in claiming.

3 THE COURT: Do you think that the -- the relatively  
4 small amount of money that could possibly be obtained might  
5 have had some effect on causing fewer claims to be filed?

6 THE WITNESS: Yes, Your Honor. That was one of the  
7 changes in the TDP. The significant changes were, in fact, to  
8 raise the occupational exposure requirement for level three to  
9 significant, to remove a diffusion test that had been abused,  
10 and to change the dollar amounts. And so, yes, absolutely that  
11 was part of the reason why there's been a decline in the non-  
12 malignancy claims filed in '04, and further declines are  
13 anticipated for '05.

14 Q And in your view what's the reason for the declines?

15 A In my view the dominant reason for the decline, but not  
16 the sole reason, is the change -- is the 2002 TDP, the changes  
17 effected by the 2002 TDP. That was the purpose of the TDP, and  
18 in my view it largely achieved that purpose.

19 Q And what's the basis for your view on that?

20 A I have a number of things I've taken into consideration in  
21 reaching that opinion. One was the -- were discussions that  
22 took place in a Mealey's conference several months ago in which  
23 I was a participant that was put together by Joe Rice and David  
24 Austern, the president of the claims processing arm of the --

25 Q Who is Joe Rice?

Brickman - Direct

30

1 A Joe Rice is one of the leading asbestos lawyers. He's on  
2 many ACC's. And at that meeting on -- and the panel discussion  
3 that I was participating in, Mr. Rice commented that with  
4 regard to the decline that had been evident to that point, that  
5 in his view that was not a transitory decline, it was a  
6 permanent decline. And he gave as reasons for that decline  
7 that the Manville -- the change in the Manville TDP, and as  
8 well the other TDPs that were then in formation involving the  
9 other trusts that are now in formation because of the on-going  
10 bankruptcies, and the fact that they too are limiting the  
11 amounts of money available to the non-malignancies, and  
12 favoring the malignancies in terms of the payment of trust  
13 assets, and these were the two dominant reasons that he listed  
14 for that decline.

15 In addition, I spoke extensively with David Austern, whom  
16 I've already identified, on the question of what he ascribes  
17 the decline to, and he also ascribes the decline primarily to  
18 the TDP, and he notes that that decline is not simply limited  
19 to Manville, but there are extensive, this other evidence with  
20 regard to other trusts already, even though most of them won't  
21 report until the end of February, that they've all had  
22 significant declines in claiming in 2004. David Austern  
23 expects that this decline will continue into 2005.

24 MR. HICKERSON: Pass the witness.

25 THE COURT: So that for estimation purposes I should

Brickman - Direct

31

1 simply transfer all future claims to the Manville trust? Is  
2 that right?

3 THE WITNESS: Obviously not, Your Honor. But  
4 certainly there's an effect between the amounts -- the values  
5 in a TDP certainly effect the quantum of claims. It's a matter  
6 of the profitability.

7 THE COURT: Anybody have any questions?

8 MR. INSELBUCH: Can we have a minute, Your Honor?

9 THE COURT: You may have 30 seconds.

10 MR. INSELBUCH: No questions.

11 THE COURT: Okay. Thank you very much, Professor.  
12 You may step down. Anything further? Any further evidence  
13 from anybody? The hearing is over? Apparently not.

14 MR. MILLER: May it please the Court, Your Honor, my  
15 name is Ralph Miller, again. And we're gong to present Dr.  
16 Dunbar. Perhaps while we set up, and we will try to move  
17 quickly, I could go ahead and make a brief offer of proof with  
18 regard to his qualifications, and we can go ahead and start  
19 with exhibits. Would that be all right, while the witness  
20 comes in?

21 THE COURT: Sure.

22 MR. MILLER: Your Honor, the initial report of Dr.  
23 Dunbar is CSFB Exhibit 157 dated October 15, which includes his  
24 curriculum vitae. And we'd like to offer that report as well  
25 as CSFB Exhibits 158 and 159 --

Brickman - Direct

32

1 THE COURT: Are they floating about here somewhere?

2 MR. MILLER: Yes, Your Honor. We have them in books.

3 UNIDENTIFIED ATTORNEY: No objection, Your Honor.

4 UNIDENTIFIED ATTORNEY: We need the books.

5 UNIDENTIFIED ATTORNEY: We'd like to see the books  
6 and the materials, please.

7 MR. MILLER: And we will pass those up in a moment,  
8 Your Honor.

9 MS. PARVER: Could you just give us, Mr. Miller,  
10 those exhibit numbers again so when we get them we can check?

11 MR. MILLER: Sure. They're 157, 158, and 159. Your  
12 Honor, very briefly, Dr. Dunbar is a senior vice president at  
13 National Economic Research Associates, NERA, in New York. It's  
14 a group of consulting micro-economists, most of whom are former  
15 academics. It has 500 people in 16 offices. He joined in  
16 1979. He received his undergraduate degree in mathematics and  
17 economics in 1966 from Reed College.

18 THE COURT: It's your theory I can't read, I take it.

19 MR. MILLER: Pardon me?

20 THE COURT: It's your theory I can't read.

21 MR. MILLER: Well, no, Your Honor. I think -- the  
22 point we wanted to emphasize here is that Dr. Dunbar is, unlike  
23 the other people who testified, an economist, and he has both a  
24 master's and a Ph.D. in economics. He's published a book we  
25 want to call to the Court's attention, Estimating Future



1 Claims, Case Studies for Mass Tort and Product Liability. And  
2 to some extent, Your Honor, I'm killing time while we set up.

3 (Laughter)

4 THE COURT: Actually, that's not necessary.

5 MR. MILLER: All right.

6 THE COURT: Silence is golden.

7 MR. MILLER: All right. Thank you, Your Honor. I  
8 did want to present something that is not in the materials,  
9 Your Honor. There are a number of judicial opinions that quote  
10 Dr. Dunbar, and perhaps -- that comment on Dr. Dunbar's  
11 testimony. And --

12 THE COURT: Comment favorably or unfavorably?

13 MR. MILLER: Well, the ones I have are all favorable,  
14 Your Honor, and I believe those are the only ones I know about.  
15 But perhaps, in the theory that people can read, do I have more  
16 -- I'll see if I can get some copies of this and pass this up  
17 in a moment. Since Dr. Dunbar is here, maybe we can swear him  
18 and begin, Your Honor.

19 THE COURT: That's possible.

20 COURT OFFICER: Please raise your right hand.

21 FREDERICK C. DUNBAR, CSFB WITNESS, AFFIRMED

22 COURT OFFICER: Please state and spell your name for  
23 the record.

24 MR. DUNBAR: Frederick C. Dunbar. F-r-e-d-e-r-i-c-k  
25 C. D-u-n-b-a-r.

Dunbar - Direct

34

1 MR. MILLER: Your Honor, we tender Dr. Dunbar as an  
2 expert in asbestos claims estimation.

3 THE COURT: You may proceed on that assumption.

4 DIRECT EXAMINATION

5 BY MR. MILLER:

6 Q Dr. Dunbar, as you sit here today, what is your best  
7 estimate based on the investigation you have done, your  
8 training and experience, and reasonable economic probability  
9 for the value of allowable claims for present and future  
10 asbestos personal injuries against Owens Corning, the Delaware  
11 parent corporation?

12 A Two point oh --

13 MR. FINCH: Objection, Your Honor. What is  
14 allowable? No foundation.

15 THE COURT: I'm sure that's a subject for cross  
16 examination when the time comes.

17 Q Yes, sir?

18 A Two point oh four six billion.

19 Q Does that --

20 THE COURT: Two point oh four six? Is that Owens  
21 Corning, not including Fiberboard?

22 THE WITNESS: That's correct.

23 THE COURT: Thank you.

24 Q Does that include or exclude the so-called contract claims  
25 where settlement agreements have been submitted under the

Dunbar - Direct

35

1 national settlement program, or other settlement agreements,  
2 and payment has not yet been made?

3 A That includes the contract claims.

4 Q Just for the record, what amount do you compute for those  
5 contract claims in that estimate?

6 A On net, 439 million.

7 Q And does that take into account the \$110 million credit  
8 which has been referred to, or not?

9 A That is after subtracting the credit from the gross  
10 amount.

11 THE COURT: Did I understand that this covers all  
12 pending claims and future claims? Everything all together?

13 MR. MILLER: Dr. Dunbar?

14 THE WITNESS: Yes. That's correct.

15 MS. PARVER: Your Honor, could we just ask if this is  
16 a nominal or present value number?

17 THE COURT: You could ask.

18 MS. PARVER: Thank you, Your Honor.

19 Q Is this nominal or present value, Dr. Dunbar?

20 A Discounted present value.

21 THE COURT: Discounted at what rate?

22 THE WITNESS: 8.12 percent.

23 Q And while we're there, your inflation rate is what, Dr.  
24 Dunbar?

25 A 2.17 percent. That's the inflation rate for the CPI.

Dunbar - Direct

36

1 THE COURT: Everybody else used 2.5 I think, didn't  
2 they?

3 THE WITNESS: Dr. Vasquez used 2.0.

4 MR. FINCH: Objection, Your Honor. That's not true.  
5 Dr. Vasquez used 2.5 and then he adjusted it to 2.0 based on  
6 other considerations.

7 THE COURT: Okay. Quibble, quibble.

8 Q Have you prepared any summaries of the differences between  
9 your estimate of other experts?

10 A Yes, I have.

11 MR. MILLER: Can I get those? This is the collection  
12 of -- Your Honor, we have a book on this testimony. If I can  
13 get those for you.

14 UNIDENTIFIED ATTORNEY: Is this a book of your  
15 demonstrative exhibits, Ralph?

16 MR. MILLER: Yes.

17 UNIDENTIFIED ATTORNEY: Can I have it too, please?

18 MR. MILLER: Sure.

19 UNIDENTIFIED ATTORNEY: And I'd like it too, please.

20 MR. MILLER: Of course.

21 UNIDENTIFIED ATTORNEY: And this is which exhibit  
22 number?

23 UNIDENTIFIED ATTORNEY: This isn't the  
24 demonstratives.

25 UNIDENTIFIED ATTORNEY: There were separate exhibits.

Dunbar - Direct

37

(Pause)

1  
2 MR. MILLER: Your Honor, I am advised that the book  
3 titled "Fred Dunbar, Direct Exhibits" has already been passed  
4 up to the Court and distributed to counsel, so that's where --

5 THE COURT: We don't know what number you're  
6 referring to.

7 MR. MILLER: Yes, Your Honor. I'll give you those  
8 numbers right now. I just want to make sure they are before  
9 the Court. Your Honor, we have moved in already the expert  
10 reports which are at the front. These are beginning at 289.  
11 They include 290 --

12 THE COURT: Well, do they begin at 289 or 290?  
13 Which?

14 MR. MILLER: No, Your Honor. They begin at 289. It  
15 continues through 290. And there is also a related exhibit at  
16 294. And we would move admission of those.

17 MS. PARVER: Which ones are we moving?

18 MR. MILLER: 289, 290, and 294.

19 THE COURT: They will be received.

20 MS. PARVER: I object, Your Honor.

21 THE COURT: I don't doubt it. What is your basis?

22 MS. PARVER: Your Honor, Court orders. Some of these  
23 exhibits are based on work that has not been disclosed to the  
24 plan proponents in accordance with the Court-ordered  
25 stipulation with respect to making things available before

Dunbar - Direct

38

1 deposition testimony.

2 MR. FINCH: Your Honor, if I could just put a finer  
3 point on that. In particular, CSFB transcripts exhibits 290  
4 and 294 have comparisons of the NERA forecast to the Dr.  
5 Vasquez forecast.

6 THE COURT: Right.

7 MR. FINCH: Dr. Dunbar has not commented on in his  
8 reports -- on -- at least hasn't done the work product to show  
9 the reconciliation. This is new material that neither Ms.  
10 Parver nor I have had a chance to depose them about. And I --

11 THE COURT: Well, you'll have chance to cross examine  
12 him.

13 MR. FINCH: Thank you, Your Honor.

14 THE COURT: Objection is overruled. Go ahead.

15 Q Dr. Dunbar, would you tell us briefly what 289 is?

16 A Yes. 289 is a table that starts at the top with the NERA  
17 forecast. And then, taking in order of the steps that are  
18 typically used to make a claims forecast I point out how you  
19 can build from the NERA forecast up to the Peterson forecast.  
20 So, basically this tells you which analytic decisions that you  
21 can switch on or off in order to get from our number up to Dr.  
22 Peterson's number.

23 THE COURT: So I can assume that your number does not  
24 accept any of those steps, one through seven? One through six,  
25 I mean.

Dunbar - Direct

39

1 THE WITNESS: That's not necessarily a yes/no answer.  
2 My preferred number is 2.046, but on Exhibit 294 I point out  
3 some adjustments that I think that I believe reasonable people  
4 could disagree on, and so you could make those adjustments in  
5 order to come up to a higher number.

6 THE COURT: So, your revised forecast is 3.151?

7 THE WITNESS: Yes.

8 THE COURT: Thank you.

9 Q Did you do a separate reconciliation from your estimate to  
10 the estimate of Dr. Francine Rabinovitz?

11 A No.

12 Q Why not?

13 A Basically, except for -- her forecast is very similar to  
14 the Peterson forecast. Among the differences are the -- she  
15 doesn't have the surge -- she has a surge adjustment which  
16 reduces her forecast from Dr. Peterson's forecast, and so, with  
17 that one change she comes very -- with that one change this  
18 table can tell you pretty closely what her forecast is, and  
19 then she also uses the KPMG curve for estimating her cancers.  
20 And so, that -- you can see what the effect of that is on this  
21 table.

22 THE COURT: Well, could I ask you a question about  
23 289?

24 THE WITNESS: Sure.

25 THE COURT: Do you complain that the Peterson

Dunbar - Direct

40

1 forecast does not take -- does not adjust for dismissal rates,  
2 but if the dismissals are counted as zero recoveries, aren't  
3 they calculated into the averaging of claims?

4 THE WITNESS: The answer to that is yes, but that  
5 doesn't mean that it zeros out. And let me -- I can explain  
6 that if you want.

7 THE COURT: If you can, I'd like to hear it.

8 THE WITNESS: Okay. In this step, 4.2, we make two  
9 changes at once. One change is that we reduced the dismissal  
10 rate to zero, and then the next change is we apply the average  
11 of values to -- that includes the zeros in the average values.  
12 And those averages that we use are the averages that Dr.  
13 Peterson would come up with before -- before adding back  
14 punitive values and verdicts, and before adding in an age  
15 adjustment. There is a reason why our dismissal rate analysis  
16 produces a different result than a one than if you just  
17 averaged in the zeros and assumed -- zero pays and assumed no  
18 dismissals.

19 THE COURT: Well, this says that it has a 16.9  
20 percent effect.

21 THE WITNESS: That's right. And I was going to get  
22 to that reason. When we estimate the dismissal rate, we  
23 estimate a dismissal rate on the non-NSP claims. And we do  
24 that because the non-NSP claims are the ones that were  
25 individually evaluated. The dismissal rate on the NSP claims



Dunbar - Direct

41

1 is very close to zero. But the dismissal rates on the NSP  
2 claims are much higher, over 30 percent, typically.

3 THE COURT: Wait a minute. You said it the other way  
4 around.

5 MR. MILLER: I'm sorry. The non-NSP claims, Dr.  
6 Dunbar.

7 THE WITNESS: I'm sorry. The dismissal rate on the  
8 non-NSP claims are over 30 percent. So -- and that occurred  
9 because there was individual evaluation, and sometimes  
10 individual contesting of the non-NSP claims, whereas the  
11 compliance effort during the NSP period was pretty much lacking  
12 as had been testified before. So, when we apply a dismissal  
13 rate, we're using an average dismissal rate only from a  
14 fraction of the claims, that is, the fraction that is non-NSP.  
15 We then apply that dismissal rate to all claims, and that  
16 includes the filings of the NSP claims, because we're presuming  
17 that if there had been individual evaluation of the NSP claims,  
18 they too would have had the same dismissal rate. They too  
19 would have had upwards of a 30 percent dismissal rate. So,  
20 those are the -- that is the number of claims that had been  
21 filed that would have been compensated had there been the same  
22 treatment accorded the NSP claims that had been accorded the  
23 non-NSP claims.

24 THE COURT: But they would have been compensated at  
25 zero --

Dunbar - Direct

42

1 THE WITNESS: That's right.

2 THE COURT: -- if they were dismissed.

3 THE WITNESS: That's right. But those zeros are not  
4 averaged in. When you compute -- when Dr. Peterson computes  
5 his average values, he doesn't give a zero to those NSP claims  
6 that would have been dismissed. He gives a value to those NSP  
7 claims that were actually paid. And what that means is that  
8 the -- the claim --

9 THE COURT: So --

10 THE WITNESS: Yes. sorry.

11 THE COURT: -- in the NSP they were making payments  
12 on claims that should have been dismissed?

13 THE WITNESS: Yes. That -- well, that's our  
14 approach, yes.

15 THE COURT: I see. Thank you.

16 Q Would you turn to Exhibit 303, Dr. Dunbar, while we're on  
17 the subject? Does this summarize the dismissal rates by  
18 disease?

19 A Yes, it does.

20 THE COURT: Which exhibit is that?

21 MR. MILLER: Exhibit 303, Your Honor. I believe.  
22 I'm sorry. I mis -- no, that's correct. Yes, Your Honor.

23 THE COURT: Yes. That's okay.

24 Q And --

25 THE COURT: They're all the same color, however.

Dunbar - Direct

43

1 MR. MILLER: No, they're not, Your Honor.

2 Q What is the very small blue line there that's barely  
3 visible on mesothelioma, Dr. Dunbar?

4 A That's the dismissal rate for -- for under the NSP  
5 agreements for the mesothelioma claims.

6 Q And where is the little blue line for lung cancer, other  
7 cancer, and non-malignant cancer, if any?

8 A Well, it's -- the fraction is so small that the graphic  
9 doesn't really -- isn't refined enough to show it. But it's  
10 zero percent rounded for lung cancer, one-tenth of one percent  
11 for other cancer, and one-tenth of one percent for non-  
12 malignant claims.

13 Q I think we've already previewed this a little bit by what  
14 you just said, but could you summarize any difference in your  
15 analysis of the claims history of the company from the analysis  
16 by Dr. Peterson and Dr. Rabinovitz?

17 A Yes. In summary, in broad-brush outline, you can look at  
18 the claims history in the 90s as having two different time  
19 periods. And I've already categorized those as pre-NSP or non-  
20 NSP versus NSP. In the pre-NSP period, as we have heard, Owens  
21 Corning took the view that it would try to apply its defenses  
22 to individual claims, by and large. There were a couple of  
23 group settlements, but for the most part they evaluated each  
24 claim and if they felt that there was not proof of causation,  
25 or if there was inadequate medical proof, then they would try

Dunbar - Direct

44

1 to extract a zero pay status for that particular claim.

2 During the NSP period things changed a lot. They made  
3 large group settlements. These large group settlements were,  
4 in Judge Weinstein's words, a highway for claims, and they  
5 allowed the plaintiff's bar to settle large inventories of  
6 claims which were then not individually evaluated by Owens  
7 Corning. Now, to be fair to Owens Corning, I believe that in  
8 the future they felt that there was going to be individual  
9 evaluation of the future claims under the NSP, but they hadn't  
10 quite got their, according to the testimony here, they hadn't  
11 quite got their compliance effort together in evaluating those  
12 claims in such years as '99.

13 MR. PODESTA: Your Honor, I must object to the  
14 characterization of other witnesses.

15 THE COURT: You don't have to. Pardon?

16 MR. PODESTA: I said I must object to the  
17 characterization of other witnesses' testimony.

18 THE COURT: I don't know that he did, but the  
19 objection is noted.

20 Q Could you tell us what your allowable claims standard is  
21 that you're using?

22 A The allowable claims standard that was used for this  
23 report has a -- basically a medical component, as well as a  
24 dismissal rate component. We presume that when a claim is  
25 dismissed it is not an allowable claim, so extrapolate non-

Dunbar - Direct

45

1 dismissed claims --

2 THE COURT: He wants your definition of an allowable  
3 claim.

4 THE WITNESS: Right. And then, we apply one more  
5 screen, which is a medical screen, to the claims. And if a  
6 claim is -- has a force of idle capacity less than 80, then we  
7 treat that as a -- as what is called an unimpaired non-  
8 malignant, and we don't give that -- in the numbers that I just  
9 gave you we don't give that any -- that claim any payment.

10 THE COURT: You're talking about pulmonary function?

11 THE WITNESS: Yes.

12 Q Did you assume that federal or state law would govern this  
13 process?

14 A I assumed that there would be state substantive law and  
15 federal procedural law, and that in the -- the Court would use  
16 such procedures as have been proven effective in the future to  
17 evaluate individual claims that would be submitted.

18 Q Do you make any specific adjustment for tactical issues  
19 that there's been testimony on such as combinations of a few  
20 mesothelioma claims with a large number of non-malignant claims  
21 for Trial and State Courts?

22 A No specific adjustments. Any effects of those impacts are  
23 in the average dollars that I use.

24 MR. MILLER: May I move around a little bit, Your  
25 Honor? I'll try to speak loudly and move quickly.

Dunbar - Direct

46

1 Q This flow chart was used in the opening. Who designed it?

2 MS. PARVER: Could you just give us the exhibit  
3 numbers?

4 MR. MILLER: Yes, I'll be happy to do that. That is  
5 Exhibit -- I'll be happy to do that.

6 UNIDENTIFIED ATTORNEY: It is 298.

7 MR. MILLER: 298. Thank you.

8 Q It was designed by whom, Dr. Dunbar?

9 A That was designed by myself and one of my staff members,  
10 Paul Hinton.

11 THE COURT: Who did the artwork?

12 THE WITNESS: Paul did the original artwork using  
13 clip art on a computer.

14 Q Would you take just less than 30 seconds and tell the  
15 Court who were the primary staff members who assisted you on  
16 this, and basically what their background is?

17 A I mentioned Paul. He has a degree in quantitative science  
18 from Oxford, and he's a master of public administration from  
19 the Kennedy School, Faten Sabry, who has a Ph.D. in economics  
20 from Stanford, and Ron Miller, who has a Ph.D. in economics  
21 from Princeton, and taught econometrics at Columbia for seven  
22 years -- five years. I'm sorry.

23 Q Would you just very quickly go to the first point in the  
24 flow chart where there is a major disagreement between your  
25 analysis and that of Drs. Peterson or Rabinovitz?

Dunbar - Direct

47

1 A Well, that would be exposed population.

2 Q And that comes in that very first box? Is that right?

3 A Yes.

4 Q Could we have demo 30A, please? Do you recall this --  
5 well, I don't want to ask you a do you recall question. I've  
6 learned about that, Your Honor. What is the green line on this  
7 chart that was shown by Dr. Peterson in his direct testimony?

8 A That's the Sear data on mesothelioma deaths for the  
9 population, age adjusted, and it includes males and females.

10 Q And that was used to show that it tracks the red line for  
11 Nicholson closer than the blue line for KPMG? Is that right?

12 A Yes.

13 Q Could we have Demo 51, please? What is that green line?

14 A That green line is the Sear data, age adjusted, for males  
15 only, and that was actually data that was reported in Dr.  
16 Peterson's back-up.

17 Q What statistical conclusions can you draw by comparing the  
18 male only line with the KPMG and the Nicholson curves?

19 A There's a way you can determine whether the green line  
20 fits better the blue line, or fits better the red line. What  
21 you assume is that points on the green line, to the extent that  
22 they don't really lie, say, on the blue line, that that  
23 distance is an error, and so you try to determine what the  
24 error is relative to the blue line versus the error relative to  
25 the red line. And the analysis that is performed shows that

Dunbar - Direct

48

1 the error relative to the red line is 50 percent greater than  
2 relative to the blue line. So, that means that the green line  
3 fits the KPMG curve better than it fits the Nicholson curve.

4 THE COURT: But for males only?

5 THE WITNESS: For males only. Yes, that's correct.

6 Q Is it your opinion that the males only is a better fit for  
7 the Owens Corning population or is the males and females a  
8 better fit for the exposed population in the Owens Corning  
9 claims history?

10 A Neither is arguably perfect, but on the basis of  
11 Nicholson's own research and on recent research on mesothelioma  
12 incidents relative to asbestos exposure, the science would say  
13 that it's more appropriate to use the male curve in order to  
14 determine what to use for forecasting.

15 Q Did you use the KPMG or the Nicholson approach?

16 A We use an approach that is the -- virtually identical to  
17 the way KPMG does its analysis. We have one major difference,  
18 though, and that is we made an adjustment to the exposed  
19 population to account for the products that Owens Corning made.  
20 This particular curve is for the entire exposed population to  
21 asbestos, which I believe prior testimony said was around 29  
22 million workers. Whenever we do a forecast we try to tailor  
23 the exposed population to the products of the defendant,  
24 because many defendants, in fact, almost all defendants make  
25 products that don't expose everybody. They may expose just a



Dunbar - Direct

49

1 fraction of the population because they didn't make a product  
2 for some -- that affected other workers.

3 In this particular case, Owens Corning did not make  
4 friction products. The primary exposure for automobile  
5 mechanics was, in fact, friction products that are used in  
6 things like brake linings. So, we took out of the population  
7 the auto mechanics, so our population is somewhat smaller than  
8 what is shown there on the KPMG curve, not much smaller, but a  
9 little bit smaller.

10 THE COURT: Did you assume that Owens Corning's  
11 products were not in the workplace where these brake lining  
12 people were working?

13 THE WITNESS: We assumed that the primary exposure of  
14 the automobile mechanics was to friction products. Now, there  
15 could be bystander exposure, but that's not going to create  
16 really any material error in the forecast, because that type of  
17 exposure by mechanics is -- can be the same as any other  
18 individual who is also not included in the occupational exposed  
19 population.

20 Q How much difference does it make which curve is used?

21 A Well, that -- it has a seven percent effect, according to  
22 our calculation with regard to mesothelioma alone, and then it  
23 has about a 13 percent effect if you substitute -- if you were  
24 to substitute all of the KPMG cancer incidents for the  
25 incidents that Dr. Peterson used. And --

Dunbar - Direct

50

1 Q All right.

2 MS. PARVER: Your Honor, I move to strike the  
3 testimony of Dr. Dunbar insofar as he said it relates to Dr.  
4 Rabinovitz, since as even Dr. Dunbar said a few minutes before  
5 he began the testimony, Dr. Rabinovitz uses the KPMG  
6 adjustment, not the Nicholson. And to the extent he's now  
7 testifying on the difference between the Nicholson and KPMG, it  
8 is not relevant.

9 THE COURT: Your argument that it should not be  
10 persuasive is well founded.

11 Q Well, let's try to clarify that. What is the comparison  
12 to Dr. Rabinovitz?

13 A There is none. I mean, this -- I'm just talking about the  
14 comparison to the Peterson forecast. The --

15 MR. MILLER: All right. That may have been my  
16 question, Your Honor --

17 THE COURT: That's what I thought.

18 MR. MILLER: -- that created the confusion.

19 THE COURT: I don't recall hearing the word  
20 "Rabinovitz," but maybe it just floated in the air.

21 MR. MILLER: Let's just make sure the record is  
22 clear. This --

23 THE COURT: He's only talking about Peterson?

24 MR. MILLER: Yes.

25 THE COURT: Okay.

Dunbar - Direct

51

1 Q Let's look at Exhibit 289 again, which we've talked about.  
2 Could we get 289 on the screen, too, please? What are steps  
3 1.1 and 1.2 in relationship to what you just explained?

4 A This is a build-up substituting if you were to go from our  
5 KPMG style, cancer incidents, to the Nicholson incidents that  
6 Dr. Peterson used, and you do that in steps, first  
7 mesothelioma, then for all other cancers. You see that it adds  
8 first seven percent and then six percent to the -- if you go --

9 THE COURT: Where do you see that?

10 THE WITNESS: Okay. Step --

11 THE COURT: Oh, I see. I see. 1.1?

12 THE WITNESS: I'm at step one.

13 THE COURT: 1.1. Okay.

14 THE WITNESS: Right.

15 Q What's the next point in the analysis where you had a  
16 disagreement between your methodology and Dr. Peterson?

17 A As has been pointed out before, what Dr. Peterson does is  
18 to estimate the non-malignancy claims as a fraction or a ratio  
19 to the historic claims that have been made for cancers, and  
20 this all cancers, including all other lung and mesothelioma.  
21 For the last four years or so, NERA has been using a different  
22 approach for its clients, and that approach was to estimate a  
23 prevalence model based on the same data that Nicholson used for  
24 his analysis, which is the Selikoff insulator data. And that  
25 -- we then estimate a propensity to claim on the basis of that

Dunbar - Direct

52

1 dose response model applied to the population that gives us  
2 non-malignancy prevalence. That propensity to sue is then  
3 going to be extrapolated forward. So, if instead we did not  
4 use that particular model, but used the approach of Dr.  
5 Peterson, which is to ratio the historic non-malignancy claims  
6 to the historic cancer claims, that would add about one percent  
7 to our forecast.

8 Q Did you agree with the conclusion of Dr. Welsh that the  
9 Selikoff data were not sufficient to develop a dose response  
10 curve for non-malignant conditions caused by asbestos?

11 A No. Statistically that's --

12 MR. FINCH: Objection. Objection. Lack of  
13 foundation. This man is not a medical expert, Your Honor.

14 THE COURT: I know. He's giving us his economic  
15 viewpoint.

16 THE WITNESS: Actually, I'm giving my statistical  
17 viewpoint, Your Honor, with all --

18 THE COURT: Well, economists and statisticians are  
19 practically the same thing.

20 THE WITNESS: Good for you.

21 Q All right. Briefly, Dr. Dunbar, why --

22 THE COURT: I don't think he finished his answer.

23 Did you?

24 THE WITNESS: No.

25 MR. MILLER: Oh.

Dunbar - Direct

53

1 Q Well, why?

2 A Her point was that the average for the -- the average dose  
3 for the Selikoff data is higher than it is for the exposed  
4 population going forward. Though her numbers were wrong  
5 qualitatively she was right. The average dose for the Selikoff  
6 sample was -- is higher than for those people who were likely  
7 to make a claim in the future. But the average dose of those  
8 who were likely to make a claim within the future was within  
9 the sample that -- of the Selikoff data. In other words, the  
10 Selikoff data included enough people with the low doses, like  
11 those who were going to be making claims in the future, to be  
12 able to estimate a model. So, we are not forecasting out of  
13 sample. We have a within sample forecast. And for that reason  
14 it is a valid approach.

15 Q Did you validate the model on other data?

16 A Yes, we did.

17 Q Very briefly, how?

18 A We validated the model on the Tulane study of progression  
19 of asbestosis.

20 Q How much difference would this make in comparison, the  
21 latency issue with the Vasquez analysis?

22 A It makes a somewhat bigger difference, which I can  
23 explain. That's on the next page, on Exhibit 290. That's a  
24 chart of reconciliation that is structured similarly to the  
25 Peterson chart. As you see, we build from our 2.046 billion up

Dunbar - Direct

54

1 to the 4.624 billion, which is the Vasquez method to forecast.  
2 Vasquez does one thing different from Peterson, and that is he  
3 makes his non-mal forecast as a ratio to lung cancer claims  
4 only, whereas Dr. Peterson uses a ratio to all cancer claims.  
5 One other difference between Dr. Vasquez and Dr. Peterson, as I  
6 mentioned, Dr. Vasquez actually developed the KPMG cancer  
7 incidents. His lung cancer incidents has one major difference  
8 from the Nicholson incidents that Dr. Peterson used, and that  
9 is the KPMG incidents is deaths of all people who were exposed  
10 to asbestos, whereas the Nicholson incidents is only the  
11 increase in cancer deaths that was caused by asbestos exposure.  
12 So, like, if you have a population of 100 workers and we say  
13 that maybe 20 of those workers are going to die of lung cancer,  
14 even if they wouldn't have been exposed, but then maybe 30 die  
15 because they were exposed, the Vasquez number for incidents is  
16 30, whereas the Nicholson and Dr. Peterson incidents is ten.  
17 So, there's a slightly different shape of the curve. And in  
18 fact, the Vasquez curve falls off more slowly in the future  
19 than does the Nicholson incidents. And for that reason there's  
20 actually a bigger impact by switching to the Vasquez method for  
21 estimating non-malignants. You will have more non-malignants  
22 in the future, everything else the same, using the Vasquez  
23 method.

24 Q Would you turn back to Exhibit 294, which is --

25 THE COURT: I'm sorry, but we're going to have to

1 take a recess for lunch.

2 MR. MILLER: All right.

3 THE COURT: Recess until -- we'll try to get back at  
4 1:45. Okay?

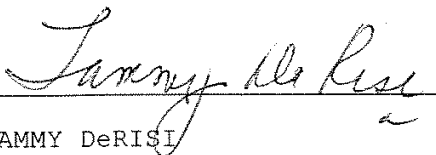
5 (Recess)

6 \* \* \* \* \*

7

**C E R T I F I C A T I O N**

I, TAMMY DeRISI, court approved transcriber, certify  
that the foregoing is a correct transcript from the official  
electronic sound recording of the proceedings in the above-  
entitled matter.

  
TAMMY DeRISI

Date: January 20, 2005

DIANA DOMAN TRANSCRIBING